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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,770	05/04/2005	Johann Wiesmuller	HUBR-1281	4179

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EXAMINER	
WEIER, ANTHONY J	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
04/29/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/533,770	WIESMULLER ET AL.	
	Examiner	Art Unit	
	Anthony Weier	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 February 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *21-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *21-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 21-24 and 27-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Heidlas et al.

Heidlas et al discloses a process wherein volatile flavors are removed from a monophase material wherein the starting material has a fat content of, for example, 10% fat, said process also including extraction treatment within using hydrocarbons (e.g. propane) at a temperature and pressure within the ranges called for in the instant claims (e.g. 20 C and 20 bar or 2 MPa). It should be noted that natural flavoring is removed primarily through the second extraction but also during the first extraction (col. 4, lines 8-12). The final extracted material is separated from the compressed gas (by using in part temperature change) to provide a liquid extract or concentrate (see Examples 1 and 2). Heidlas et al also discloses said gases used to be recycled for economic reasons (see col. 3, lines 10-15).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 25, 26, and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidlas et al.

Heidlas et al discloses a process wherein volatile flavors are removed from a monophase material wherein the starting material has a fat content of, for example, 10% fat, said process also including extraction treatment using hydrocarbons (e.g. propane) at a temperature and pressure within the ranges called for in the instant claims (e.g. 20 C and 20 bar or 2 MPa). It should be noted that natural flavoring is removed primarily through the second extraction but also during the first extraction (col. 4, lines 8-12). The final extracted material is separated from the compressed gas to provide a liquid extract or concentrate (see Examples 1and 2). Heidlas et al also discloses said gases used to be recycled for economic reasons (see col. 3, lines 10-15).

The claims further call for treating lutter water produced in fruit and vegetable processing. Although Heidlas et al is silent regarding treatment of waste waters from processing, it would have been obvious to one having ordinary skill in the art at the time of the invention to have treated any material containing aroma containing natural substances including processed olives as a matter of preference employing the method set forth in Heidlas et al. It is not seen wherein the particular source of, for example, olive material (such as waste water) would have made for a patentable distinction.

The claims further call for the introduction of an entrainer such as alcohol with the compressed hydrocarbon. Although Heidlas et al is silent during the use of such an entrainer during the first extraction step, an alcohol retainer (e.g. ethanol) is employed

with regard to the second extraction step which includes the use of compressed carbon dioxide. It would have been further obvious to have included said entrainer in the first extraction step for the same purpose.

Response to Arguments

5. Applicant's arguments filed 2/8/09 have been fully considered but they are not persuasive.

Applicant argues that contrary to the instant invention Heidlas et al requires the use of a two extraction system for extracting natural aromas. However, the instant claims do not limit the process to a single step and/or excluding the second step of extraction as disclosed in Heidlas et al.

Applicant argues that Heidlas teaches away from the instant invention as fruits and vegetable juices and waters produced in processing of same containing practically no fats and oils which is an essential component to be removed in the Heidlas et al process. Heidlas et al , however, does not limit processing to the few substances expressly recited therein. Rather, Heidlas et al extends the treatment therein to "all other natural substances containing fat and oil as well as aroma substances are...also suitable" (col. 2, lines 39-41). Olives are a particular type of fruit that contain both fat and oil as well as aroma substances, and it would have been obvious to have treated same as a known alternative source of oil and aroma..

All other arguments have been addressed in view of the rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
Primary Examiner
Art Unit 1794

/Anthony Weier/
Primary Examiner, Art Unit 1794

Anthony Weier
April 25, 2009